extreme of holding that continuous and exclusive possession together with the appropriation of profits for the statutory period will raise a presumption of law that there has been an ouster. *Thomas* v. *Garvan,* 15 N. C. 223.

BAIL—DISCHARGE OF SURETY—INSANITY OF PRINCIPAL.—The plaintiffs in error were sureties on a recognizance for the appearance of a criminal. The principal did not appear, and upon a proceeding to show cause why judgment for the penalty should not be rendered against the sureties, they pleaded the insanity and confinement of the principal in another state. The state demurred. *Held,* that insanity was a good excuse for non-performance of the conditions of the recognizance and released the sureties. *Smith et al.* v. *People,* (Colo., 1919) 184 Pac. 372.

The general rule is that if the condition of the undertaking of special bail becomes impossible of performance by the act of God, or of the law, or of the obligee, the bail are thereby discharged.

The reason of the rule is well expressed in the principal case where the court said, "it is plain that the purpose of a recognizance is merely to insure the presence for trial of a person accused of a bailable offense. The enriching of the public treasury is no part of the object at which the proceeding is aimed." It is well settled law that the death of the principal will discharge the bail. *Wakefield* v. *McKinnel,* 9 La. 449; *Griffin* v. *Moore,* 2 Ga. 331; *Mather* v. *People,* 12 Ill. 9; *State* v. *Cone,* 32 Ga. 663; *Hayes* v. *Carrington,* 12 Abb. Pr. (N. Y.) 179; *Granberry* v. *Pool,* 14 N. C. 155; *Mount Pleasant Bank* v. *Pollock,* 1 Ohio 36. The principal of these cases is that it has been put out of the power of the surety to exonerate himself. So, too, in the cases of unavoidable accidents and sickness, it has been held to excuse sureties for non-appearance. *Hargis etc.* v. *Begley,* 129 Ky. 477; *Scully* v. *Kirkpatrick,* 79 Pa. St. 324; *People* v. *Manning,* 8 Cowen (N. Y.) 297; *Chase* v. *People,* 2 Col. 481. Also the arrest of the principal by military authorities has been held to excuse the surety, *Belding* v. *State,* 25 Ark. 315; *Commonwealth* v. *Webster,* 1 Bush (Ky.) 616, or where a soldier principal is in the federal army, and at such a distance as to be unable to get a furlough. *Commonwealth* v. *Terry,* 2 Duv. (Ky.) 383. But where the principal is in the army, whether voluntarily or involuntarily, within a short distance of the place, and a furlough could have been obtained, but was not requested, the sureties are not released. *Briggs* v. *Commonwealth,* (Ky., 1919) 214 S. W. 975. There are also some decisions supporting the principal case, holding that insanity of the principal, if he is confined in a state asylum, or is adjudged insane, will excuse. *Wood* v. *Commonwealth,* 17 Ky. L. Rep. 1076; *Commonwealth* v. *Fleming,* 15 Ky. L. Rep. 491; *Fuller* v. *Davis,* 1 Gray (Mass.) 612. But in *Adler* v. *State,* 35 Ark. 517, it was held that confinement in an insane asylum, in another state, would not discharge the sureties. However in view of the other acts of God that will discharge the sureties, there is no good reason on principle, why insanity should not.

BANKRUPTCY—PROVABILITY OF TORT CLAIMS.—By fraudulent representations M was induced to buy certain foreign bills of exchange drawn by a

firm composed of L. & C. These bills were dishonored at maturity, and the firm and its members having been declared bankrupts, proof of claim against each one of the three estates was made by M. The claims against the individual estates were based primarily upon the fraud. Both the Circuit Court of Appeals and District Court had affirmed an order of the referee expunging and disallowing the claims against the individual estates. On certiorari, *held* such tort claims not provable under § 63 of the Bankruptcy Act. *Schall* v. *Camors,* U. S. Sup. Ct. Adv. Aps., Jan. 5, 1920.

It was held under our earlier bankruptcy acts that unliquidated claims arising purely *ex delicto* were not provable. *Dusar* v. *Murgatroyd,* 1 Wash. C. C. R. 13 (Act of 1800); *Doggett* v. *Emerson,* 1 Woodb. & M. 195 (Act of 1841); *In re Boston & Fairhaven Iron Works,* 23 Fed. 880 (Act of 1867). It has often been contended that the presence of subdivision *b* in § 63, providing for liquidation of unliquidated claims, and the wording of clause (2) in § 17, providing, since the amendment of 1903, for the exception from discharge of *"liabilities* for obtaining property by false pretenses or false representations, or for willful and malicious injuries," etc., should lead to a result different from that reached under the earlier acts. It had, however, been held that the amended § 17, cl. (2) did not enlarge the class of provable claims. *In re United Button Co.,* 140 Fed. 495, 149 Fed. 48. *In re New York Tunnel Co.,* 159 Fed. 688. Also that § 63b did not authorize the liquidation and proof of purely tort claims. *In re Southern Steel Co.,* 183 Fed. 498. In *Dunbar* v. *Dunbar,* 190 U. S. 340, the court stated that § 63 b did not add to the claims provable under § 63 a; but in *Crawford* v. *Burke,* 195 U. S. 176, some language was used casting doubt upon this. The decision in the principal case settles finally the mooted question. The court expressly lays on one side, as unaffected by the decision the provability of such claims as were involved in *Crawford* v. *Burke, supra; Tindle* v. *Birkett,* 205 U. S. 534, the torts there being waivable and forming ground for liability *quasi ex contractu* on the basis of unjust enrichment.

COMMON CARRIERS—ACCEPTANCE OF GOODS BY CARRIER—BILL OF LADING.—Plaintiff delivered for shipment a carload of cotton upon a siding and received from defendant's agent the uniform bill of lading containing the following provision: "Property destined to or taken from a station * * * at which there is no regularly appointed agent shall be entirely at the risk of the owner after unloaded from cars, * * * and when received from or delivered on private or other sidings, * * * shall be at owner's risk until the cars are attached to and after they are detached from train." Upon destruction of the car and contents by fire while still on the siding, the plaintiff brings this action for the value of the cotton. *Held,* the goods had been accepted by defendant and it was liable as a common carrier for the loss. *Yazoo & Miss. Valley R. R. Co.* v. *Nichols & Co.,* (Miss., 1919), 83 So. 5.

The liability of the railroad as a common carrier begins when the goods have been delivered to the carrier ready for immediate shipment. That the